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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,562	07/18/2003	Peter Ho	01-12	4794
30031	7590	03/07/2006	EXAMINER	
MICHAEL W. HAAS, INTELLECTUAL PROPERTY COUNSEL RESPIRONICS, INC. 1010 MURRY RIDGE LANE MURRYSVILLE, PA 15668			PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/622,562	Applicant(s) HO, PETER	
	Examiner Nihir Patel	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 and 33-41 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 36-41 is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-17, 21-29 and 33-35 is/are rejected.
- 7) ☒ Claim(s) 7-9, 18-20, 30 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on December 5th, 2005 have been fully considered but they are not persuasive. The applicant argues that the present invention requires only three straps to secure the mask and provides lateral stability rather than five straps. The five straps provide equal stability as three straps. The applicant also argues that Ho fails to teach contoured panels that include panels which have an upper edge with a length and lower edge with a length. The length of the upper edge being shorter than the length of the lower edge. The examiner disagrees. Ho does teach contoured panels that include panels which have an upper edge with a length and lower edge with a length. The length of the upper edge being shorter than the length of the lower edge (those areas defined by 18).

Drawings

1. The drawings were received on November 18th, 2005. These drawings are accepted.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 10-17 and 21-29 are rejected under 35 U.S.C. 102(e) as being anticipated by HO et al. (US 6,805,117).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

2. As to **claim 1**, Ho teaches a headgear for a patient interface device comprising a headpiece **18** having contoured panels, each panel including an upper edge having a length and a lower edge having a length, the length of the upper edge is shorter than the length of the lower edge (**those areas defined by 18**); and a connecting strap (**see figure 1**) attached to the headpiece and adapted for releaseably connecting the headgear to the patient interface device **46**.
3. As to **claims 2, 13 and 25**, Ho teaches a headgear for a patient interface device wherein the headpiece comprises a rear-joining piece **28** positionable along a rear portion of a patient’s head, a front joining piece positionable along a front of such a patient’s head **18 (that area defined by 18)**; wherein each of the contoured panels extend from the rear joining piece to the front joining piece (**see figure 1**).
4. As to **claims 3, 14 and 26**, Ho teaches a headgear for patient interface device wherein the connecting strap is an upper connecting strap attached to the front joining piece and adapted to releaseably connect the headgear to the patient interface device (**see figure 1**).
5. As to **claims 4, 15 and 27**, Ho teaches a headgear for patient interface device that further comprises a lower connecting strap attached to the rear joining piece and adapted to releaseably connect the headgear to the patient interface device (**see figure 1**).

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6. As to **claims 5, 16 and 28**, Ho teaches a headgear for patient interface device wherein the upper and lower connecting straps include hoop and loop components for adjustably connecting the headgear to the patient interface device (**see column 3 lines 36-38**).

7. As to **claims 6, 17 and 29**, Ho teaches a headgear for patient interface device wherein the upper and lower connecting straps include a loop fastener portion on the exterior thereof and an end portion having a hook tab portion, wherein each hook tab portion is adapted for threading through a connecting element of the patient interface device and securing to the loop fastener device (**see column 3 lines 36-38**).

8. As to **claims 10, 21 and 33**, Ho teaches a headgear for patient interface device wherein the headpiece is formed from an elastomeric material (**see column 2 lines 55-67**).

9. As to **claims 11, 22 and 34**, Ho teaches a headgear for patient interface device that further comprises a stabilizer **64** attached to the headpiece and adapted to stabilize a conduit connected to the patient interface device.

10. As to **claim 12**, Ho teaches a headgear for patient interface device that comprises a patient interface device **46** adapted to fit over a portion of the face of a patient and having a connector element **44**; and a headgear comprising a headpiece **18** having contoured panels, each panel including an upper edge having a length and a lower edge having a length, the length of the upper edge is shorter than the length of the lower edge (**areas defined by 18**), and a connector strap (**see figure 1**) attached to the headpiece and adapted to releasably connect the headgear to the connector element.

11. As to **claims 23 and 35**, Ho teaches a headgear for patient interface device wherein the patient interface device is nasal mask (**see figure 1**).

12. As to **claim 24**, Ho teaches a headgear for patient interface device that comprises a gas flow-generating device **74** that produces a flow of gas; a conduit **60** having a first end portion operatively coupled to the gas flow generating device and a second end portion, wherein the conduit carries the flow of gas from the gas flow generating device during operation of the system; a patient interface device **46** coupled to the second end portion of the conduit, the patient interface device having a connector element **44**; and a headgear comprising a headpiece **18** having contoured panels, each panel including an upper edge having a length and a lower edge have a length, the length of the upper edge is shorter than the length of the lower edge (**the areas defined by 18**), and a connector strap (**see figure 1**) attached to the headpiece and adapted to releasably connect the headgear to the connector element.

Allowable Subject Matter

1. Claims **36 through 41** are allowed.
2. Claims **7-9, 18-20, 30 and 31** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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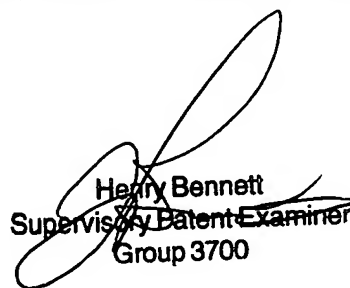
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nihir Patel
Art Unit 3743


Henry Bennett
Supervisory Patent Examiner
Group 3700